

FORMAL COMPLAINT
ORIGINAL



0000042783

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER – Chairman 2006 FEB 21 P 4:37

WILLIAM A. MUNDELL

MARC SPITZER

MIKE GLEASON

KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

T-03267A-06-0105

T-01051B-06-0105

McLEODUSA TELECOMMUNICATIONS
SERVICES, INC.,

) DOCKET NO. T-03276A-06-____

) DOCKET NO. T-01051B-06-____

Complainant,

) **COMPLAINT**

v.

) **[Expedited Hearing Requested]**

QWEST CORPORATION,

Respondent

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), pursuant to 47 U.S.C. § 252(e) and A.A.C. R14-3-101 and -106 files this complaint against Qwest Corporation ("Qwest") for overcharging McLeodUSA for collocation power charges under the terms of its interconnection agreement and amendments thereto. In support of its complaint, McLeodUSA states:

1. McLeodUSA is a certificated competitive local exchange carrier in the State of Arizona.

2. Qwest is an incumbent local exchange carrier as defined in 47 U.S.C. section 251(c).

3. McLeodUSA offers competitive local services in several markets in Arizona using collocation space leased from Qwest pursuant to Section 251(c)(6) of the Telecommunications Act and an interconnection agreement ("ICA"), as amended between the parties approved by the Arizona Corporation Commission, in combination with McLeodUSA's network facilities. In the State of Arizona, McLeodUSA has 28 active collocations out of which it offers telecommunications services.

1 4. McLeodUSA installs various equipment in its collocation sites that are used in the
2 provision of telecommunications services to end users. Virtually every piece of collocated
3 equipment requires power for operation. Most equipment is powered by direct current ("DC"), for
4 which Qwest assess various power charges.¹ The amount charged by Qwest for providing DC
5 power constitutes a significant percentage of the monthly operating cost for each collocation.
6 Accordingly, excessive power charges have a significant impact on the profitability of offering
7 facilities-based services in each market served from that wire center.

8 5. Under the original arrangements between the parties, Qwest billed McLeodUSA for
9 DC power based on the amount of DC power originally ordered by McLeodUSA on the
10 collocation application. For example, if McLeodUSA had originally ordered 100 amps for a
11 collocation, Qwest billed DC collocation power charges at 100 amps each month. This charge was
12 billed and paid regardless of whether the McLeodUSA equipment drew 20 or 90 amps in a
13 particular month. The amount of collocation power originally ordered by McLeodUSA was made
14 using engineering specifications designed to anticipate growth in power usage by the collocated
15 equipment as McLeodUSA added lines being served by the equipment.

16 6. Recognizing the excessive costs resulting from being billed for collocation power
17 for ordered power, McLeodUSA requested an amendment to the ICAs to reduce collocation power
18 charges in 2004. Qwest provided McLeodUSA an amendment to the ICA entitled "DC Power
19 Measuring Amendment to the Interconnection Agreement between Qwest Corporation and
20 McLeodUSA Telecommunications Services, Inc." (hereinafter "Amendment") The Parties
21 executed the Amendment on August 18, 2004. The Amendment was filed with the Arizona
22 Corporation Commission on September 1, 2004 and became effective by operation of law on
23 September 30, 2004. A copy of the Amendment is attached as Exhibit A.

24 7. In accordance with the Amendment, Qwest began to monitor power usage at the
25 McLeodUSA collocations at which more than 60 amps had originally been ordered.

26 _____
27 ¹ Each collocation also has alternating current (AC) installed to power primarily equipment
not used to provide services.

1 8. While Qwest subsequently began billing one element of collocation power charges
2 using the monitored power usage (in most instances), Qwest continued to bill for another power
3 charge element - Power Plant Usage - at the "ordered" level of power.

4 9. After an audit revealed that Qwest was continuing to bill certain collocation power
5 charges using "ordered" levels rather than based on actual usage, McLeodUSA initiated a billing
6 dispute in September 2005 and began withholding disputed amounts to equal the dispute back to
7 the effective date of the amendment. McLeodUSA ceased withholding disputed amounts in
8 December 2005 while reserving its right to challenge all such billings. Qwest denied the billing
9 dispute and insists the charges are valid. McLeodUSA and Qwest have agreed that McLeodUSA
10 has exhausted all available dispute remedies under the ICA.

11 10. Qwest's continued billing of collocation power charges based on "ordered" rather
12 than actual power usage is inconsistent with the terms of the 2004 Amendment. The 2004
13 Amendment provides that Qwest will monitor power usage at the power board at least semi-
14 annually. Once the actual use is known, Qwest must bill for power using the actual usage. Based
15 on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce
16 the monthly usage rate to CLEC's actual use. If CLEC is using more than the ordered amount,
17 Qwest will increase the monthly usage rate to the CLEC's actual use. The Amendment does not
18 distinguish the charge for DC Power Plant from the amount of DC Power used. Attached as
19 Exhibit B is the Declaration of Michael Starkey in support of the McLeodUSA's complaint, which
20 provides further explanation of the collocation power charges.

21 11. The DC Power Plant should be recovered on a pro rata share actually used by
22 McLeodUSA. Qwest's continued billing of DC Power Plant at ordered levels charges
23 McLeodUSA for more than its pro rata share for the costs of the DC Power Plant. As a result,
24 Qwest is charging McLeodUSA for DC Power Plant in violation of the Amendment. Moreover,
25 Qwest is discriminating against McLeodUSA in favor of itself and any other carrier that is using
26 more amps of the DC Power Plant in a given month than McLeodUSA is using.
27

ROSKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

WHEREFORE, McLeodUSA respectfully requests the Arizona Corporation Commission grant the following relief:

1. A declaration that Qwest's billing practices for DC Power Plant violates the Interconnection Agreement between Qwest and McLeodUSA as amended by the Amendment.
2. An order requiring Qwest to refund to McLeodUSA all charges for DC Power Plant that were billed in violation of the Amendment.
3. An order requiring Qwest to comply with the Amendment by billing McLeodUSA on the pro rata share of DC Power Plant actually used by McLeodUSA.
4. An order providing such other relief as deemed to be just and proper.

RESPECTFULLY SUBMITTED this 21st day of February, 2006.

ROSHKA DEWULF & PATTEN, PLC

By 

Michael W. Patten
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Original and 15 copies of the foregoing filed this 21st day of February 2006 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered/mailed this 21st day of February 2006 to:

Lyn Farmer, Esq.
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

ROSKA DEWULF & PATTEN, PLC

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15 N:\Cases\mcl.qwest\power dispute\Complaint.DOC
16
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19
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23
24
25
26
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EXHIBIT

"A"

Qwest
4041 N. Central Avenue, Suite 1100
Phoenix Arizona 85012
Phone 602 830-2187
Facsimile 602 235-3107

NEW APPLICATION
ORIGINAL



Norman G. Curtright
Corporate Counsel

Qv. ---

Spirit of Service

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

2004 SEP - 1 P 1:26

RECEIVED

September 1, 2004

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

T-01051B-04-0636
T-03267A-04-0636

Re: Amendment to Wireline Interconnection Agreement between
McLeodUSA Telecommunications Services, Inc. and Qwest
Corporation for the State of Arizona

Dear Madam or Sir:

Accompanying this transmittal is an Amendment to the Interconnection Agreement between McLeodUSA Telecommunications Services, Inc. ("McLeod") and Qwest Corporation ("Qwest").

The Agreement is hereby amended by adding the terms, conditions and rates for DC Power Measuring, as set forth in Attachment 1, attached hereto and incorporated herein by reference. The underlying agreement was approved by the Arizona Corporation Commission on December 14, 2000, Docket No. T-01051B-00-0698, Decision No. 63248.

Please contact me at (602) 630-2187 if you have any questions concerning the enclosed. Thank you for your assistance in this matter.

Sincerely,

Norman G. Curtright

Enclosures

Arizona Corporation Commission
DOCKETED

SEP 01 2004

DOCKETED BY

Docket Control, Arizona Corporation Commission
September 1, 2004
Page 2

cc: Mr. Timothy Berg, Esq.
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012

Ms. Julia Redman-Carter
McLeodUSA Telecommunications Services, Inc.
6400 C Street, Box 3177
Cedar Rapids, IA 52406-3177

**DC Power Measuring Amendment
to the Interconnection Agreement between
Qwest Corporation and
McLeodUSA Telecommunications Services, Inc.
for the State of Arizona**

This Amendment ("Amendment") is to the Interconnection Agreement between Qwest Corporation (f/k/a U S WEST Communications, Inc.) ("Qwest"), a Colorado corporation, and McLeodUSA Telecommunications Services, Inc. ("CLEC"), an Iowa corporation.

RECITALS

WHEREAS, the Parties entered into an Interconnection Agreement, for service in the state of Arizona, that was approved by the Arizona Corporation Commission on December 14, 2000, as referenced in Docket No. T-01051B-00-0698, Decision No. 63248 ("Agreement"); and

WHEREAS, the Parties wish to amend the Agreement under the terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amendment Terms

The Agreement is hereby amended by adding the terms, conditions and rates for DC Power Measuring, as set forth in Attachment 1, attached hereto and incorporated herein.

Effective Date

This Amendment shall be deemed effective upon Commission approval; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met. Additionally, Qwest shall implement any necessary billing changes within two (2) billing cycles after the latest execution date of this Amendment, with a true-up back to the latest execution date of this Amendment by the end of the second billing cycle. The Parties agree that so long as Qwest implements the billing changes and the true-up as set forth above, the CLEC's bills shall be deemed accurate and adjusted without error.

Amendments: Waivers

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach

August 2, 2004/msd/McLeodUSA/DC Power Measuring/AZ
Amendment to CDS-000714-0097

1

of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Entire Agreement

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

McLeodUSA Telecommunications
Services, Inc.

James E. Thompson
Signature

James E. Thompson
Name Printed/Typed

GVP, General Counsel and Secretary
Title

August 17, 2004
Date

Qwest Corporation

L. T. Christensen
Signature

L. T. Christensen
Name Printed/Typed

Director - Interconnection Agreements
Title

8/18/04
Date

ATTACHMENT 1

DC Power Measuring

1.0 Monitoring

1.1 CLEC orders DC power in increments of twenty (20) amps whenever possible. If CLEC orders an increment larger than sixty (60) amps, engineering practice normally terminates such feed on a power board. If CLEC orders an increment smaller than or equal to sixty (60) amps, the terminations will normally appear on a Battery Distribution Fuse Board (BDFB).

1.2 If CLEC orders sixty (60) amps or less, it will normally be placed on a BDFB where no monitoring will occur since the power usage rate reflects a discount from the rates for those feeds greater than sixty (60) amps. If CLEC orders more than sixty (60) amps of power, it normally will be placed on the power board. Qwest will monitor usage at the power board on a semi-annual basis. However, Qwest also agrees to take a reading within thirty (30) Days of a written CLEC request, after CLEC's installation of new equipment. Qwest will perform a maximum of four (4) readings per year on a particular collocation site. Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly usage rate to CLEC's actual use. If CLEC is utilizing more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use. Until such time that CLEC places equipment and a request is received from CLEC to monitor, Qwest will bill CLEC based on the amount of power ordered. Once Qwest receives a CLEC monitoring request, it will bill the actual power usage rate from the date of the CLEC's monitoring request until the next reading. The next reading date may be generated as a result of the CLEC request or a Qwest routine reading and Billing will be adjusted on whichever date comes first.

2.0 Rate Elements - All Collocation

2.1 -48 Volt DC Power Usage and AC Usage Charges. Provide -48 volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Usage Charge is for the capacity of the power plant available for CLEC's use. The AC Usage Charge is for the power used by CLEC. Both the DC Power Usage Charge and the AC Usage Charge are applied on a per ampere basis.

2.2 The -48 Volt DC Power Usage Charge is specified in Exhibit A of the Agreement and applies to the quantity of -48 Volt Capacity specified by the CLEC in its order.

2.2.1 -48Volt DC Power Usage Charge - Applies on a per amp basis to all orders of greater than sixty (60) amps. Qwest will initially apply the -48 Volt DC Power Usage Charge from Exhibit A of the Agreement to the quantity of power ordered by CLEC. Qwest will determine the actual usage at the power board as described in Section 1.2. There is a one (1) amp minimum charge for -48 Volt DC Power Usage.

2.3 CLEC rates for Collocation must be included in CLEC's existing Interconnection Agreement with Qwest prior to amending with DC Power Monitoring (Measuring) Amendment.

EXHIBIT

"B"

BEFORE THE ARIZONA CORPORATION COMMISSION

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.,

Petitioner,

v.

QWEST CORPORATION,

Respondent

DECLARATION OF MICHAEL
STARKEY IN SUPPORT OF
MCLEODUSA'S COMPLAINT

1. My name is Michael Starkey. I serve as the President of QSI Consulting, Inc. ("QSI"). My business address is 243 Dardenne Farms Drive, Cottleville, MO 63304-1002.
2. QSI has been retained by McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") to review invoices related to various collocation services it purchases from the Qwest Corporation ("Qwest").
3. On August 18, 2004, Qwest and McLeodUSA finalized an amendment to the parties' interconnection agreement entitled *DC Power Measurement Amendment to the Interconnection Agreement between Qwest Corporation and McLeodUSA Telecommunications Services, Inc. for the State of Washington* (hereinafter "the Amendment"). The purpose of the Amendment was to revise the manner by which Qwest would bill McLeodUSA for Direct Circuit ("DC") Power Usage associated with electrifying McLeodUSA's equipment collocated in Qwest central offices.
5. Prior to the August 2004 Amendment, Qwest assessed a per ampere usage charge applied directly to the capacity of the power cables and fuses McLeodUSA had requested via its original collocation order. The amount of power actually consumed by McLeodUSA over those power cables was not considered by Qwest

in Qwest's "power usage" charges. McLeodUSA intended the Amendment to require Qwest, from that point forward, to revise its billing processes to assess -48 Volt DC Power Usage charges solely on the number of amperes actually consumed by McLeodUSA's equipment, rather than billing based on the capacity for power originally ordered (with the single caveat that such measurement would only occur in collocation arrangements wherein McLeodUSA had originally ordered power feeder capacity in excess of 60 amperes).¹ In short, McLeodUSA intended the Amendment to require Qwest to bill McLeodUSA on an "as consumed" rather than an "as ordered" basis for -48 Volt DC Power.

6. Section 2.2 of the Amendment identifies Exhibit A to the Agreement as the source for rates for the Power Usage charges discussed in the Amendment. Exhibit A identifies five rate elements relative to Power Usage at section 8.1.4. An excerpt from Exhibit A is provided below for reference. Though there are five specific rate elements listed below, note that they largely identify different rates depending upon whether the original order was for more, or less, than 60 amperes. Hence, Exhibit A identifies two primary rate elements related to *Power Usage* – (i) *Power Plant* and (ii) *Power Usage* (for our purposes, the "usage more than 60 Amps" is the appropriate rate given that the Amendment speaks only to arrangements wherein the original order exceeded 60 Amps):

¹ The Amendment recognizes that orders for greater than 60 Amps were generally engineered such that McLeodUSA power feeds would be placed on a power board that will facilitate usage monitoring. Power feeder cables ordered in increments smaller than 60 Amps would generally appear on a Battery Distribution Fuse Board ("BDFB") instead.

				Recurring	Recurring, per Mile	Non-Recurring
8.1.4	Power Usage					
8.1.4.1	-48 Volt DC Power Usage, per Ampere, per Month					
8.1.4.1.1	Power Plant					
8.1.4.1.1.1	Greater Than 60 Amps			\$10.75		
8.1.4.1.1.2	Equal to 60 Amps			\$10.75		
8.1.4.1.1.3	Less Than 60 Amps			\$10.75		
8.1.4.1.2	Power Usage					
8.1.4.1.2.1	Less Than 60 Amps, per Amp			\$3.64		
8.1.4.1.2.2	More Than 60 Amps, per Amp			\$7.27		

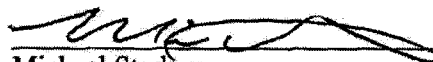
7. As indicated in the excerpt above, Qwest assesses both a *Power Plant* (8.1.4.1.1) and *Usage* (8.1.4.1.2) rate element relative to McLeodUSA's total *Power Usage* (8.1.4). Upon review of the invoices from Qwest to McLeodUSA for DC *Power Usage* since August 2004, as well as other relevant documentation such as the Parties' interconnection agreement and subsequent amendments, it is clear that that Qwest has billed, and continues to bill, McLeodUSA charges for DC Power Usage at the original "as ordered" levels instead of the "as consumed" levels set forth in the Amendment.
8. The "Power Plant" referred to in Exhibit A at Section 8.1.4.1.1 is comprised of rectifiers necessary to convert the alternating current ("AC") delivered by the utility to the central office to the -48 Volt DC Power required to electrify McLeodUSA's equipment (and the majority of the other telecommunications used by Qwest and other collocators in the central office). The "Power Plant" also consists of batteries necessary to stabilize the DC power and provide short-term backup, backup generators for longer-term redundancy, power distribution equipment and other equipment necessary to manage the DC power for use. It is important to note that this Power Plant equipment is common to the entire Qwest central office and is used to support the equipment of Qwest as well as the CLECs—*i.e.*, this equipment is not dedicated to the use of CLECs generally or McLeodUSA specifically. It is also important to note that the Power Plant does

not include power cables or other equipment directly feeding McLeodUSA's collocations or constructed specifically for its use. The Power Plant is the common DC power system that serves all DC power-related needs for the central office.

9. Power engineers design a central office Power Plant based upon the forecasted power requirements ("draw") of the entire central office. They then build the initial Power Plant to accommodate those forecasted needs and likewise monitor existing power usage across the office to gauge the need for any augmentation that may be required. When the power requirements of the central office begin to exceed a given "target" capacity constraint of the existing equipment, augmentation options are studied and if augmentation is required, additional equipment is added.
10. Because the central office Power Plant is designed and managed relative to the power usage requirements of the entire office, the initial design and subsequent augmentations are relatively blind to the individual actions (either orders or equipment placement) of any single collocater.

DATED this 21st day of February, 2006.

By:


Michael Starkey